

Management and Oversight Issues

As the CALFED Program moves toward implementation, Program management and oversight issues need to be addressed in order to assure that implementation occurs in a timely and effective manner. Many stakeholder groups have promoted the concept of creating a new entity for the management of the Ecosystem Restoration Program (ERP). However, there is general agreement that before that specific question can be fully addressed, it is necessary to address the broader program oversight and management issues.

The discussion and analysis of oversight issues can be framed by three basic questions:

1. Are there problems associated with using the current institutional structure, i.e., CALFED, as the program oversight entity? If so, what are they?
2. What are the functional requirements for program implementation? What does the oversight entity need to be able to do? What authorities will be needed?
3. Having identified the functions of the oversight entity, what are the options for responding to the identified problems with the existing structure and for performance of the required functions?

As currently structured CALFED provides a forum for interagency coordination and decision making, mechanisms for formal and informal stakeholder advice to the decision makers, and support staff to generate the necessary research and documentation required to move the collaborative environmental planning process forward. However, experience with the existing structure suggests that there are problems which need to be addressed in order to assure that the CALFED Program is successfully implemented.

In addition, many believe that program implementation would be significantly enhanced by vesting broad program oversight and implementation functions in a single entity which would be accountable for overall program governance and execution.

Current Problems

Some of these problems associated with the current CALFED structure include:

Planning versus Implementation: CALFED was created specifically to create a long-term plan. However, plan implementation poses significant new challenges which the current arrangement was not designed to deal with. These involve potentially much larger cash flows, addressing demanding implementation schedules, interacting with affected stakeholders, local entities, and regulatory issues in new ways, and potentially greater legal liabilities.

Program Administration: CALFED does not exist as a legal entity; it has no independent power or administrative authority to receive appropriations, hire and retain staff, establish a location for housing the program, issue contracts, and other basic administrative functions. This will affect its long-term ability to attract and retain highly qualified staff, develop a coherent program, and carry out its duties in an efficient manner. Very substantial staff efforts are currently required to address the complex challenges of dealing with multiple budgets, personnel procedures, and resource requirements.

Decision Making Protocol: CALFED as currently configured does not have a formal decision-making protocol. While it is generally agreed that participating agencies will not give up any independent decision making authorities to a CALFED governance entity, this leaves a broad range of program policy and implementation issues on the table for resolution as the Program moves forward. It is likely to become increasingly important to resolve issues in a clear and unambiguous way through a consensus process, majority rule, or other option.

Decision Making Responsibility and Input: CALFED currently receives input through a wide variety of pathways, including member agencies, the Bay Delta Advisory Council and its work groups. There is a need to review and potentially modify the input process to address stakeholder concerns regarding overall program governance. The fundamental issue is whether program governance will be vested in CALFED agencies, or shared with stakeholders in a new management entity. The water policy issues CALFED is working to resolve will be addressed in the legislative process, with a great deal of both formal and informal interaction between the two. The extent to which this relationship is formalized and the impact on CALFED's decision making process needs to be considered and addressed.

Budget and Funding Coordination: CALFED funding is channeled through several different federal and state agencies. Funds for CALFED programs and projects are provided by federal appropriations, state bonds and local agencies. Budget and spending authority is decentralized. Significant efforts at interagency coordination have made this approach functional during the planning phase, but as complex programs and projects are implemented, a more efficient method of financial management may be necessary.

Public and political accountability: From the perspective of the public generally, it is difficult to assign specific responsibility or accountability for the success or failure of the CALFED Program. For most of the public, "CALFED" has no recognizable identity as an agency or entity. If implementation of the program is to be successful, it must have the support of voters, taxpayers and elected representatives. This support may be easier to obtain and hold if members of the public and their representatives can identify the CALFED Program with a recognizable agency or entity. For legislators in particular, it may be necessary to provide a focal point for legislative attention (budgets, oversight hearings) that is currently lacking in the informal CALFED arrangement.

Task orientation: Each CALFED agency has a mission and a set of legal duties and obligations. In some cases, this mission may be only tangentially related to the CALFED

Program. In other cases, there may be substantial overlap. But in no case is the implementation of the CALFED Program coterminous with a single agency's mission or scope of authority. While this may not be essential for the success of the program, in the long run, it may be a significant advantage if somewhere in the federal and state agency constellation, there is an entity charged with the specific mission of implementing this program, rather than having program implementation be an ancillary function to other primary missions.

Implementation Principles

In the discussion papers prepared for CALFED by Betsy Rieke and Doug Kinney of the Natural Resources Law Center, several implementation principles were suggested for consideration when looking at oversight structure options. These are summarized below:

1. Implementation should be based on a regional perspective.
2. Implementation should be based on a problemshed orientation.
3. Implementation should be based on a process orientation.
4. Political viability must be considered.
5. Function should drive structure, i.e, identify needs, then form.
6. Consider broad trends in federalism.
7. Do not burden administrative entities with fundamental policy problems.
8. Integrate conflict resolution methods.
9. Allow for flexibility and creativity.

Design Issues

The Rieke papers also identified a set of design issues to consider when looking at implementation oversight options. Each of these issues raised a set of specific questions which will have to be discussed by the stakeholders and the agencies.

1. Scope (substantive, spatial, temporal)
2. Functions (tasks)
3. Membership/participation
4. Operational attributes
5. Authorities (legal powers)
6. Legal structure (form)
7. Financial resources

Implementation Functions

Based on the discussions so far within the Assurances Work Group and at BDAC, a set of functions which a program manager or management entity should be able to perform can be